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In The

Supreme Court of the United States

October Term, 1963

No. 574

ROBERT M. WILLIAMSON, JR., MARJORIE WILLIAMSON,
Individually and as Independent Executors of
the Estate of EFFIE GILMER WILLIAMSON,
Petitioners,

v.

THE HONORABLE PAUL PEURIFOY,
Judge of the 95th District Court
in Dallas County, Texas
Respondent

PETITION FOR A WRIT CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROBERT M. WILLIAMSON, JR.,
MARJORIE WILLIAMSON,
Individually and as Independent Executors
of the Estate of Effie Gilmer Williamson
pro se
4923 Gaston Ave.,
Dallas, Texas

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To the Chief Justice of the United States
and the Associate Justices of
the Supreme Court of the United States:

The Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit is in a copy in the Appendix.

The Grounds of Jurisdiction

(i) The judgement sought to be reviewed was dated and entered on April 29, 1963.

(ii) A petition for rehearing was entertained by the United States Court of Appeals, Fifth Circuit and denied on July 22, 1963.

(iii) Jurisdiction of this Court is invoked under U.S.C. 28 § 2101 (c).

Questions Presented for Review

1. Is a motion for a preliminary injunction (extended to a motion for a permanent injunction following proof of continuing actions of defendant pending suit which required permanent injunctive relief) filed in primary and exclusive equity jurisdiction in a United States District Court to move the Court to prevent defendant, a judge in the judicial branch of a state from continuous violation of petitioners' rights under Amendment 14, the result of which could only mean that petitioners can be deprived of property without due process of law, substantiated before the hearing by an amended allegation of jurisdiction alleging jurisdiction under *U.S.C.A. 28, §1331, Note 52, Ex Parte Young v. Minnesota* sufficient to ensure the jurisdiction of the United States District Court in equity for petitioners' suit, when defendant admitted in an affidavit (responsive to petitioners' allegations) which he executed pending suit on *May 16, 1962*, admitted in evidence as an attachment to a motion amicus curiae granted by the Federal District Judge (before the hearing on petitioners' jurisdictional statement on *May 25, 1962*) that he had denied due process of law and the equal protection of the laws to petitioners?

Ex Parte Young v. Minnesota 21 S. Ct. 441, 52 L. ed. 714.

2. Is the fact that on appeal, pursuant to *U.S.C.A. 28 § 1653*, in briefs, petitioners further amended the allegation of jurisdiction to conform to proof that defendant had enforced against them a state statute in a discriminatory manner sufficient to ensure jurisdiction in the United States Court of Appeals in equity for petitioners' suit, after the Federal district judge would not permit petitioners to amend to show that defendant in an affidavit he made on May 16, 1962, attested that he, a judge in a state district court, talked to judges in Dallas County, Texas, prejudicing them against 76935 A/D (an action at law pending in his court) and enforced against petitioners a state statute repugnant to Amendment 14, and/or that the use of said statute against petitioners by defendant was discriminatory, when petitioners showed to the

Court of Appeals amendment to conform to proof was required and when the affidavit made on May 16,1962, was filed three times thereafter on Sept. 25, 1962, on Nov. ...., 1962, on Dec. 5, 1962 in a designation for appeal?

Green v. Louisville and Interurban R.R. Co., 61 L. ed. 1280.

Republic Acceptance Corp. v. De Land, U.S. 28 § 1331, Note 52, 275 F. 632.

Defendant, a judge in a state district court could only be enjoined from enforcing against petitioners an unconstitutional act in a United States District Court in equity. *U.S.C.A. 28 § 1331, Note 52, ex parte Young v. Minnesota.*

3. Is Texas R.C.S. Section 8, a Texas State Statute repugnant to Amendment 14 or is the way defendant enforced the statute discriminatory and a violation by defendant of petitioners' rights under the equal protection clause of Amendment 14?

Green v. Louisville and Interurban R.R. Co. 61, L. ed. 1280.

TEXAS R.C.S. 199, SECTION 8 FROM VERNON'S TEXAS STATUTES

"The trial of no cause need be delayed because of the disqualification of the judge in whose court it is pending, however, no case shall be transferred from one court to another without the consent of the court to which it is transferred."

4. When state district judges in a county refuse to try a case pending in the county is that a change of venue? *Contrary to Amendment 14.*

5. When a Federal district judge admits in evidence the affadivit of defendant by granting a motion amicus curiae to which it is attached on May 16, 1962 and on May 25, 1962

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[1] "Pleadings may be amended to conform to proof but not to allege facts not proved below." *Young's Rubber Corp. v. C. I. Lee Co., Inc., 45 F. 2d 103.*

admits in evidence an affidavit of petitioners in response, by the judicial acts does the Federal district judge exercise jurisdiction over defendant and over the subject matter?

6. What is the significance in relation to the exercise of jurisdiction when a Federal district judge remands or represents to remand an action to a state district court from which it had never been removed, when a petition for removal for said action was pending in the United States District Court filed on May 1, 1962, before the hearing on May 25, 1962?

(The petition for removal was never considered by the United States District Court, to petitioners' knowledge. The instrument filed May 1, 1962, is in the record.)

7. Is the fact "motions" are dismissed in an order signed by a Federal district judge a judicial determination which shows the exercise of jurisdiction by the Federal district court, when the order signed dismissing the motions shows that the court did not represent therein that it was without jurisdiction? (See order 2, Appendix main brief, p. 3.)

In order 2, motions are dismissed. There were two motions before the district court (one R. p. 1 (page 1 original motion) one R. p. 41, 42, 43). The petition for removal is not mentioned in the order. A motion amicus curiae had been granted by the court on May 16, 1962, with matters therein not in accord with petitioners' pleadings before order 2 was entered in chambers May 25, 1962, in which there is no statement the court is without jurisdiction.

8. Can the three fatally defective orders of the district court, after this court concedes jurisdiction in equity, be vacated as prayed because the fatal defects appear in the record and can relief in equity be granted on the facts in the record?

Order No. 1 is fatally defective because it was not signed and entered in the record.

Order No. 2 represents to dismiss motions, omitting the

petition for removal, and cannot be identified as the order issued from the bench because the record shows it is not in accord with the order issued from the bench set out in the transcript of proceedings or identifiable with Order 3 because in Order 2 (written by an amicus curiae, an astute attorney present May 25, 1962) there is no statement the court was without jurisdiction. (See excerpt in Per Curiam decision, Appendix, p 22.)

Order No. 3 was issued in chambers and represents to restate an order issued from the bench May 25, 1962, and entered in the record May 28, 1962. The record shows there is no order entered in the record May 28, 1962 in which the court said it was without jurisdiction. The error permeates the entire order rendering it fatally defective.

9. Is a statement of defendant in a suit in equity in which injunctive relief is prayed free from doubt when defendant made the statement in an affidavit admitted in evidence in a Federal District Court on May 16, 1962, refiled it on Sept. 25, 1962, and on Nov. , 1962, and designated it on appeal Dec. 5, 1962, that he talked to judges in Dallas County, Texas, about an action at law pending in his court thereby prejudicing them, for the fact he talked about litigation was prejudicial?

10. Does the fact that the evidence in the record is entirely documentary and cumulative, except for the testimony of one witness whom the Federal District Judge would not permit to testify[1] but whose testimony can only affirm the admission of defendant that he denied due process of law to petitioners, permit this court to make a decision on the uncontradictable admission of defendant that he enforced against petitioners a state statute repugnant to Amendment 14 effecting a change of venue from Dallas County, Texas, for 76735-A/D because no judge in Dallas County, Texas, will try it or that he enforced

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[1]Any error in admitting evidence is cured by defendant's admissions covering the same transactions. *Kreinbring v. U.S. 216 F. 2d 671, U.S.C.A. 2106, Note 60*

a special remedy in his court over which he has complete control and that such remedy is discriminatory?[1]

11. Does this court find any contradictory evidence in the record to the fact defendant enforced against petitioners Texas R.C.S. 199, Section 8, 101 District Court?

12. Is it evident to this court that no findings were made by the district court on the evidence in affidavits before it and if in reviewing the record the United States Court of Appeals discovered any findings, it did not disclose what they were but issued an opinion under the unusual circumstances as follows:

> "It is perfectly plain that Section 2283 of Title 28, United States code denies jurisdiction to a Federal Court to enjoin proceedings in a state court under unusual circumstances not here present"?

13. Is there any remedy when a judge in a state district court enforces against litigants an unconstitutional act except by injunction in a United States District Court in equity and is equity made up principally of remedies?

14. Does the permanent denial of due process of law and the equal protection of the laws to petitioners by a judge in a state district court admitted by him under the following circumstances constitute irreparable injury to petitioners?

Valid litigation is in process in a state district court: Two pre-trial hearings not in accord with Rule 166, Texas Rules of Civil Procedure were held, in the last of which due process of law was denied to petitioners.

A suit in equity is filed in a United States District Court to prevent defendant from the permanent denial of due process of law to petitioners. Pending suit before the hearing on petitioners' jurisdictional statement, defendant executed an affi-

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[1]Any circumstances which could force a conscientious litigant to go into a Federal District Court alleging denial of due process of law in a state court would have to appear to the litigant to be provable and free from doubt. It can only be evident to this Court that petitioners subpoenaed the witness and the documents.

davit stating he had prejudiced petitioners' rights in the state courts and had enforced a state statute in a discriminatory manner the result of which can only define as a change of venue for 76935 A/D from Dallas County, Texas, or a special remedy in the 95th District Court in Dallas County, Texas devised by defendant in the 95th District Court in Dallas County, Texas, over which defendant has complete control. Pending suit defendant has joined in activities which do not show routine defense or that he is unprejudiced.

On Sept. 10, 1962, defendant sent a 10 day card, a threat to dismiss 76935 A/D after he had notice on July 11, 1962, an appeal from No. 9097, No. 19862 was pending in the United States Court of Appeals.

On Dec. 5, 1962, he sent in a designation for appeal.

On Feb. 25, 1963, he wrote saying he was really not the defendant (copy of letter in appellants' supp. brief), entered no brief on appeal, and was not present April 4, 1963, in the United States Court of Appeals.

15. Is amendment to conform to proof permitted on appeal, particularly when the amendment is to correct an allegation of jurisdiction defective only because additional proof in the course of litigation has been added to the record, and when the right to amend defective allegations of jurisdiction on appeal is permitted pursuant to *U.S.C.A. 28 § 1653?*

16. Does equity permit a United States Court to do complete justice so that complete relief is granted; for example when preventive relief is not enough can a petition of removal for a case from a state court to a United States District Court be granted when it is evident that in the state courts petitioners face disaster and the permanent denial of due process of law and the equal protection of the laws under the conditions created by defendant against petitioners in the state courts; and 76935 A/D is removable to Federal District Court because it has never been even pre-tried in accord with due process and it could have been brought in the Federal Court in the first place and is removable under U.S.C.A. 28 § 1441 (b) because some of the properties recoverable in 76935 A/D are in two

states and assets to be recovered are in possession of persons in four states and a multiplicity of suits could follow and the action at law could have been filed in the U. S. District Court in the first place?[1]

17. Provided this Court conceded the court below had jurisdiction in equity and recommended to the court below that it grant the petition for removal, is not granting the petition of removal sufficient without further proceedings?

18. Does the Per Curiam decision leave the impression, after a review of the record including the amendments to conform to proof in the briefs before the United States Court of Appeals, Fifth Circuit and the fatally defective orders of the district court, that it cannot be sustained?[2]

19. Does this court find that the United States Court of Appeals, Fifth Circuit, adhered to the doctrine of stare decisis in error in sustaining fatally defective orders of the district

[1]The removal statutes are jurisdictional. Petitioners would wish that removal could follow for 76935 A/D pursuant to U.S.C.A. 28 § 1441 (b) without delay and would point out to this court both of the courts below completely disregarded the petitions for removal in the record.

[2]The court of appeals represents to affirm the judgement of the district court. Judge Davidson did not say petitioners did not file a claim on which relief could be granted. He said it made no difference how the pleadings are worded, stating a judge could not be enjoined. Certainly he was not considering the file before him but was considering the law in a suit in which some litigant might have attempted pursuant to *U.S.C.A. 42 § 1983* to seek a remedy at law. Petitioners alleged jurisdiction under *U.S.C.A. 28 § 1331, Note 52* in equity, all as was before the United States District Court and the United States Court of Appeals.

court, the fatal defects of which appear in the record; in entering an opinion, when judicial admissions were before it, without specific findings of fact; in refusing to permit an amendment to an allegation of jurisdiction to conform to proof on appeal; and before the petition for a rehearing was filed July 10, 1963, by returning the exhibits, a part of the record to the clerk of the United States District Court with a covering letter, June 20, 1963, stating Mr. Goodell would withdraw the exhibits by a special motion?

Copy of letter June 20, 1963, Appendix, p. 50.
A copy was not sent to petitioners.
Letter Aug. 16, 1963, Appendix, p. 54.
Instruments Aug. 16, 1963, Appendix, p. 51-53.
Letter Sept. 5, 1963, Appendix, p. 56.

20. Is it significant that in both courts below an attorney who entered the suit in equity as an amicus curiae appeared to control the litigation in both of the courts below, that he wrote the order to dismiss signed in chambers by Judge Davidson May 25, 1962, and included in the Per Curiam decision in which order there is no statement the district court is without jurisdiction; that he filed a brief on appeal and concluded the argument in the United States Court of Appeals contrary to Rule 25 in the rules of that court; that copies of the orders issued by the Court of Appeals, dated April 29, 1963, and July 22, 1963, were sent to him and the copies indicate none were sent to defendant; and that the entire collateral attack amicus curiae was permitted to make in both courts below showed the issues raised did not answer the allegations of petitioners and that an amicus curiae is supposed to inform on the issues raised by pleadings and to introduce nothing more?

21. After conceding jurisdiction in equity correctly alleged by petitioners and proved by the admission of defendant, can this court on the uncontradictable fact that defendant prejudiced petitioners' rights in the state courts and enforced against them a state statute repugnant to Amendment 14 or enforced a state statute in a discriminatory manner against

petitioners grant relief on equity without delay and particularly on the basis that the District Court and the experienced Court of Appeals failed to apply the law and equitable principles to the admitted facts?

Does the fact that Judge Davidson permitted judicial admissions and granted a motion to correct the record showing petitioner's affidavit filed last show a court without equity?

22. Does this Court find any reasons for further proceedings to frustrate and delay when without inconvenience to defendant it can on the facts apply the law and equitable principles to the admitted facts[1] and grant relief in equity to ensure a venue for 76935 A/D in accord with due process by preventing defendant from further actions discriminatory toward petitioners in the 95th District Court and can instruct the Court below to enter a decree which should have been entered? The relief which should be entered is set out in the petition for a rehearing (prayer amended, p. 4).

> "In equity suit, Circuit Court of Appeals must direct the Trial Court to enter the decree which should have been entered."
>
> *Millers' Mut. Fire Ins. Ass'n of Illinois v. Warrod Potato Growers Ass'n C.C.A. Minn. 1938, 94 F. 2d 741— U.S.C.A. 28 ¶ 2106, Note 261.*

23. Is this Court in accord with:

> "District Court has no discretion to deny relief by preliminary injunction to person who clearly establishes by undisputed evidence that he is being denied a constitutional right." *(Henry v. Greenville Airport Commission, 284 F. 2d 631.)*; and does this Court concede that an un-

[1] "Appellate Court will not ordinarily interfere with actions of Trial Court either by granting or withholding preliminary injunction and will not reverse order unless it appears there was palpable misapplication of well settled rules of law but it will reverse for failure to apply appropriate equitable and legal principles to the facts." *Federal Trade Commission v. Rhodes Pharmacal Co., 191 F. 2d 744.*

contradictable fact was before the District Court which it omitted from consideration by making no findings on the evidence before it, that defendant enforced a statute against petitioners, and that the Appellate Court compounded the error of the District Court?

24. Does this Court find in the record before it in the petition for a rehearing (prayer as corrected, p. 4); the amended allegation of jurisdiction and petition to issue a writ of injunction; and the amended petition for removal, amendments sufficient on which to base a decision to grant injunctive relief and general relief in equity?

25. Is it not apparent to this Court that irreparable injury faces petitioners in the State Courts and no remedy whatever owing to the continued permanent discrimination effected against petitioners in the State Courts by defendant and that instructions to the Court below to grant a petition for removal after conceding jurisdiction in equity is just?

26. Is it not evident to this Court from the record, that a continuance of wrongful and discriminatory acts begun by defendant threaten petitioners as long as 76935-A-D remains in the 95th District Court and in the State District Courts and does not granting injunctive relief after conceding jurisdiction in equity and applying the law and equitable principles to uncontradictable facts accomplish justice?

Constitutional and Statutory Provisions Involved

Due process clause, equal protection clause.
U.S.C., Const. Amendment 14.
U.S.C.A. 28 § 1331, Note 52.
U.S.C.A. 28 § 1441 (b).
U.S.C.A. 28 § 1651.
U.S.C.A. 28 § 1653.
U.S.C.A. 28 § [redacted] (exceptions to)

Statement of the Case

On March 20, 1962, petitioners filed a motion for a preliminary injunction in primary and exclusive equity jurisdiction in the United States District Court (T. W. Davidson, U.S.D.J.). The averments in the motion show special grounds for invoking equity jurisdiction *(Ex Parte Young v. Minnesota)*, that defendant a judge in a State District Court denied petitioners due process of law in the 95th District Court in Dallas County, Texas. The motion was substantiated by an affidavit clearly stating defendant denied petitioners due process of law (mimeographed R. p. 15).

The motion was answered by a motion to dismiss (irregular in that it was not signed by the attorney who wrote it) signed by defendant and mailed twice from his address showing defendant was responsive to the issues tendered by the pleadings of petitioners. By the answer which he signed defendant subjected himself to the general jurisdiction of the Court (the plea in abatement was inseparable from the other matter in the denial (mimeographed R. p. 27). The statement in the general denial that petitioners had failed to pursue any remedies open to them in the State Courts the record clearly denies. In appellants' brief p. 6 Appendix is an instrument showing that petitioners filed applications for motions for temporary injunctions in the State Court in order to appeal from an interlocutory order in a State Court to the State Appellate Court and submit that the issue raised by defendant shows denial of due process by him when he refused to review the application for temporary injunctions filed in his Court showing the intent of petitioners to proceed with an appeal from an interlocutory order in the State District Court to the State Court of Appeals.

On Feb. 1, 1962, petitioners reminded defendant that on March 17, 1961, in proceedings in the 95th District Court in Dallas County, Texas, he had denied petitioners freedom of speech and due process of law.

After the statement was filed on Feb. 9, 1962, defendant wrote a letter to a plaintiff he would not try 76935 A/D which was pending in his Court and the so-called disqualification as entered could only mean denial of due process.

On Feb. 28, 1962, on instructions from defendant the office of the clerk of the District Courts in Dallas County, Texas, refused petitioners the right to file instruments. The presiding judge permitted filing (corrections of typographical errors) and gave petitioners a note with the telephone number of the assignment clerk (admissible in evidence) for a setting for a hearing on an application for a temporary injunction. The setting for the hearing a petitioner discussed with the assignment clerk who had difficulty in finding a visiting judge for only one day. Petitioners in the interim discovered the only relief from discrimination effected in State Courts by a judge in a State District Court was by way of preliminary injunction in a United States District Court. The last application for a temporary injunction in the State Court, which the office of the district clerk in Dallas County, Texas, had to have special permission to file was filed March 3, 1962. Petitioners filed the motion for a preliminary injunction in the United States District Court on March 20.

An excerpt from the statement petitioners filed in the 95th District Court in Dallas County, Texas, Feb. 1, 1962, follows:

STATEMENTS NOT IN THE WRITTEN RECORD

"The judge of the 95th District Court admonished plantiff present March 1, 1961, not to speak in court."

The plaintiff had made no effort to speak in court at any time.

"The result of the second admonition at the close of the irregular hearing deprived plaintiffs of the right to protest in open court the proposal of defendant's attorney (in 76935 A/D) that he should write a court order before all his improper exceptions were heard in open court."

Motion

"Plaintiffs . . . move the Court to act promptly according to the various courses now open. These are:

1. A prompt response to the applications for temporary injunctions or
2. A careful review of this statement for the correct use of discretion it invites.

"A conscientious consideration of the time table herein shows too much delay under any circumstances."

The motion was included in the exhibits filed with the motion to attach exhibits to the original motion April 24, 1962 (R. pp. 41, 42, 43) and is a part of the record.

F. R. 10 (c), 1963 Federal Rules of Civil Procedure.

"A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."

O'Donnell v. Elgin J & E Ry. Co. 1950 94 L. ed. 187.

The suit in equity grew out of a so-called pre-trial hearing in the 95th District Court in Dallas County, Texas, in which defendant denied petitioners due process of law (stated in plaintiff's affidavit, mimeographed R. p. 15).

"The ground for equitable jurisdiction to interfere is therefore something dehors the issues, something arising out of or connected with the trial itself of the legal action in the court of law."

Clemons v. Board of Education of Hillsboro 228 F. 2d 853.

Defendant enjoys judicial immunity and there is no remedy when a state judge violates litigants' rights under Amendment 14 except in a United States District Court in equity.

U.S.C.A. 42 ¶ 1983, Note 51.

"Judicial immunity with respect to judicial acts has not been curtailed by this section."

Ray v. Huddleston D. C. Ky. 1963, 212 F. Supp. 343.

". . . cases in which the remedy sought and obtained is one which equity courts alone are able to confer must upon any consistent classification belong to the exclusive jurisdiction of equity."

Pomeroy Equity Jurisprudence, Vol. 1, p. 198 ¶ 138.

In petitioners' instant suit in equity jurisdiction was alleged pursuant to *U.S.C.A. 28 ¶ 1331, Note 52, Ex Parte Young v. Minnesota.* The rights denied by defendant to petitioners were legal rights, the remedy is one which only equity can grant.

"The primary right of the complaining party may be

legal. Remedial right . . . may be entirely equitable recognized and given by equity alone."

Pomery Equity Jurisprudence, Vol. 1, p. 125 ¶ 97.

"The right existing at law, the remedy must be one the law does not administer at all."

Pomeroy Equity Jurisprudence. Vol. 2, p. 187 ¶ 424.

"The distinctions between equitable remedies and legal remedies may not be ignored and must not be deemed to have been abrogated."

Coca-Cola v. Dixi Cola Laboratories, 155 F. 2d 59, 63.

Th averments in petitioners' original motion; denial of due process, prejudice, and discriminatory tactics were answered by defendant in an answer he designated for appeal. He answered the summons and represented himself at the hearing May 25, 1962, in the United States District Court.

"A summons, complaint, and return of service prima facie vested the District Court with jurisdiction of the action."

Jiffy Lubricator Co. v. Alemite Co., D. C.N. D. 1939 28 F. Supp. 385, U.S.C.A. 28 ¶ 1331, Note 21.

Jurisdiction of a Federal District Court over the person of a defendant must be acquired by service or process or by defendant's appearance in the litigation."

Ex Parte Republic of Peru La. 1943, 63 S. Ct. 793, U.S.C.A. 28 ¶ 1331, Note 21.

In his answer was included a plea in abatement.

"A plea in abatement waives any matter which might have been set up as a plea to the jurisdiction."

American Jurisprudence, Vol. 3, p. 790 ¶ 14.

His answer was a motion to dismiss the action, thus invoking the power of the Court to grant relief on other than jurisdictional grounds and he entered a general appearance and submitted himself to the general jurisdiction of the Court.

"A defendant who appears to resist a motion made by the plaintiff is deemed to have made a general appearance so as to subject himself to the jurisdiction of the Court."

American Jurisprudence, Vol. 3, p. 796 ¶ 23.

On May 16, 1962, an affidavit executed by defendant was admitted in evidence by the Federal District Judge (a judicial admission).

Petitioners filed an amended allegation of jurisdiction on April 24, 1962, correctly alleging general federal question jurisdiction pursuant to *U.S.C.A. 28 ¶ 1331, Note 52* which was before Judge Davidson before he granted the motion amicus curiae on May 16, 1962, to which defendant's affidavit was attached and which Judge Davidson admitted in evidence on May 16, 1962, before the hearing on petitioners' jurisdctional statement on May 25, 1962.

The affidavit of defendant was responsive to petitioners' allegations correctly alleged under general federal question jurisdiction.

> "District courts are vested with jurisdiction . . . over a variety of civil actions where jurisdictjon rests upon . . . a specific grant of federal jurisdiction or a general federal question."
>
> *Moore's Manual—Federal Practice and Procedure, 1963, p. 12.*
>
> *In Moore's Manual the U.S.C.A. 28 ¶ 1331, statutes are specified.*
>
> *U.S.C.A. 28 ¶ 1331, Note 52 (Ex Parte Young v. Minnesota, 21 S. Ct. 441, p. 452,* applies to instant suit in equity.
>
> "The various authorities we have referred to furnish justification that individuals who as officers of the state are clothed with some duty in regard to the enforcement of the laws of the state who threaten to enforce against parties an unconstitutional act may be enjoined in a Federal Court in equity from such action." *ibid p. 452.*

Amendment 11 of the Constitution shows that a state is out of reach of the processes of the courts.

> ". . . the distinction was drawn between a suit in which the state is the real party in interest . . . the defendant was not sued because he is an officer of the government, and the Court is not ousted of jurisdiction because he asserts authority as such officer."
>
> *Ex Parte Young v. Minnesota 52 L. ed. 714, p. 739.*

"Let it not be forgotten that Young was sued not as an individual or because he had any personal interest in these matters but as and solely because he is an officer of the state charged with the performance of certain public duties."

"The difference between the power to enjoin courts from proceeding in their own way to exercise jurisdiction is plain and no power to do the latter exists because of the power to do the former." *ibid 52 L. ed 714, p. 730.*

Petitioners are laymen. The instruments filed show inexperience but they also show diligence and that the rights violated by defendant are due process and the equal protection of the laws under Amendment 14. Defendant continued pending suits to do acts which discriminated against petitioners. Some authorities say that under the circumstances courts of equity overlook technicalities and consider substance not only the form.

Three successive steps must be taken so that petitioners may obtain relief in equity.

1. Defendant must be prevented from continuous violation of petitioners' rights under Amendment 14 in the 95th District Court in Dallas County, Texas, which the original motion was filed to prevent under *U.S.C.A. 28 ¶ 1331, Note 52.* Petitioners sought jurisdiction in equity and preventive relief in equity.

2. To ensure due process of law for 76935 A/D and to avoid the prejudice enforced by defendant in the State District Courts in Dallas County, Texas, for 76935 A/D, the case must be removed by petition of removal from the 95th District Court in Dallas County, Texas, pursuant to *U.S.C.A. 28 ¶ 1441 (b)* to the United States District Court.

Any method of amendment advised by this Court petitioners can undertake.

Petitioners are aware that good pleadings achieve good results and they are not in accord with the statement issued from the bench by Judge Davidson when petitioners asked to amend at the hearing both before and after proceedings.

> "It makes no difference how the pleadings are worded, it would still be a call on a Federal judge to go down and tell a state judge what to do and that cannot be done under the law." (Mimeographed R., p. 90.)

In rendering the Per Curiam decision the United States Court of Appeals, Fifth Circuit, overlooked the facts in the record that defendant's answers were responsive to petitioners' allegations (except collateral attack) and that Judge Davidson did not state that petitioners had not filed a claim on which relief could be granted. He said ~~he did not care~~ how the pleadings were worded.

From the filing of defendant's answer April 6, 1962, the Federal District Judge had jurisdiction over defendant and over the subject matter.

> "Jurisdiction . . . the power to hear and determine a matter."
> *American Jurisprudence, Vol. 30A § 77.*

On May 16, 1962, Judge Davidson exercised jurisdiction. He granted a motion amicus curiae and admitted in evidence an affidavit of Judge Peurifoy attached to the motion.

> "Where the act done involves the exercise of discretion of judgment or the officer is called upon to pass on evidence and decide performance of that duty is a judicial act."
> *Sweeney v. Young, 82 N. H. 159, 42 ALR 757, American Jurisprudence, Vol. 3.*

Judge Davidson exercised jurisdiction on May 25, 1962, as follows:

1. He permitted petitioners to file an affidavit answering

defendant's affidavit and in accord with it that defendant denied due process of law to petitioners *(judicial admissions)*.

2. He remanded or attempted to remand a case never removed to the United States District Court, a petition of removal for which filed May 1, 1962, as an amendment to the original motion was pending in the United States District Court on May 25, 1962, never acted on in the District Court or in the Court of Appeals.

Unquestionably remanding a case is a judicial act. The significance of the facts in the record concerning remanding or attempting to remand a case, never removed to the United States District Court is for this Court to decide.

3. He refused to permit petitioners the right to interrogate a witness subpoenaed to testify or to identify the documentary evidence subpoenaed.

4. He issued an order to dismiss from the bench (mimeographed R., p. 90). Since the order was not formulated, signed, and entered in the record, only speculation about what Judge Davidson intended the order to include is possible because he signed two orders thereafter with different representations about jurisdiction in each. Certainly the statement in the transcript shows the order issued from the bench is only an order to dismiss.

The order to dismiss was issued after the affidavits were admitted in evidence, one of "the other side" May 16, 1962, one of petitioners May 25, 1962.

The evidence in the affidavits admitted by Judge Davidson define as "judicial admissions."

> *"Judicial admissions" American Jurisprudence, Vol. 20, p. 469, ¶ 557. Martin v. State, 85 ALR 512.*
>
> ". . . testimony and written statements given voluntarily and made by a party as a witness, competent against him on the trial of any issue . . . to which they are pertinent . . . admissions made in the course of judicial proceedings are substitute for and dispense with the actual proof of facts."

". . . written and verbal declarations are within the rule . . . declarations against interest are admissible."

American Jurisprudence, Vol. 20, p. 469 ¶ 556.

A reasonable analysis could be that Judge Davidson had facts before him admitted by defendant on which to make findings which he refused to do.

Among the facts admitted by defendant is one uncontradictable fact that defendant enforced against petitioners a state statute repugnant to Amendment 14. It is the controlling fact in this suit in equity to which no other witness can testify.

Defendant admitted substantially that he did not hear all the exceptions to a petition March 17, 1961 (denial of due process) (mimeographed R., p. 99). The witness subpoenaed to testify can only substantiate that defendant did not hear all the exceptions. The evidence, except for the testimony of the witness is entirely documentary and cumulative.

> "Exclusion of proffered correct testimony could not be urged as prejudicial where another witness testified to substantially the same facts." *Harper v. U. S. 143 F. 2d 795.*

However, the admission of all evidence is best in any litigation.

In the affidavits defendant's and petitioners' there was no conflicting testimony on constitutional issues. The affidavit of defendant was responsive to petitioners' affidavit attached to pleadings and to pleadings. For example (mimeographed R., p. 11) petitioners stated instructions were issued to the district clerk's office in Dallas County, Texas, that they were to file no instruments. Defendant made an identical statement in his affidavit (mimeographed R., p. 100).

> "Here the allegations of the complaint were sufficient. The evidence was undisputed and it was undisputed that defendants ignored the constitutional rights of plaintiffs." *Clemons v. Board of Education of Hillsboro, 288 F. 2d 853, 857.*

Defendant made the uncontradictable admission that he had

enforced against petitioners Texas State Statute R.C.S. 199, Section 8.

If this Court decides the statute is repugnant to Amendment 14 the case is *Republic Acceptance Corporation v. De Land, 275 F. 632.* If the decision is the enforcement of the statute by defendant was merely discriminatory and discrimination is contrary to Amendment 14, the cases are *Green v. Louisville and Interurban R. R. Co., 61 L. ed. 1280, Looney v. Crane 62 L. ed. 23, Western Union Teleg. Co. v. Andrews, 54 L. ed. 430.* Whatever the decision, enforcement constitutes an unconstitutional act and jurisdiction is correct as *Ex Parte Young v. Minnesota, 52 L. ed. 714* shows.

Texas R.C.S. 199, Section 8, is quoted page 3 herein.

Republic Acceptance Corporation v. De Land, 275 F. 632, p. 634:

". . . a Federal Court has jurisdiction to restrain individuals who are officers of a state from enforcing as said officers an unconstitutional statute of said state."

The fact that the enforcement had been accomplished before petitioners were aware of it in no way altered the fact that the irreparable injury is permanent because further wrongful acts of the same character were accomplished pending suit and are continuously threatened as long as 76935 A/D remains in the Court over which defendant presides.

"Discontinuance of wrongful or illegal conduct does not alone warrant the denial of injunctive relief, and where notwithstanding the acts complained of it appears that further wrongful acts of the same character are in effect threatened by defendant . . . the suit will not be defeated."

American Jurisprudence, Vol. 28, p. 495 ¶ 7.

Goshen Mfg. Co. v. Hubert A. Meyers Mfg. Co., 242 U. S. 202, 61 L. ed. 248.

"Neither the constitutionality of the statute, if that is conceded, avail to oust the Federal Court of jurisdiction, a valid law may be wrongfully administered by officers of the state so as to make such administration an illegal burden and exaction on the individual."

Green v. Louisville and Interurban R.R., 61 L. ed. 1280.

"In making an officer of a state a party defendant in a

suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officers must have some connection with the enforcement of the act."

Ex Parte Young v. Minnesota, 52 L. ed. 714.

Judge Peurifoy admitted the enforcement of state statute R.C.S. 199, section 8 against petitioners in a discriminatory manner, the uncontradictable evidence in the record no amount of cumulative evidence later admitted can alter. Judge Peurifoy refiled the affidavit on three successive dates, Sept. 25, 1962, Nov. , 1962, Dec. 5, 1962 *(in designation for appeal)*.

On the undisputed evidence pointed out in briefs and at the hearing on April 4, 1962, the United States Court of Appeals could have rendered an independent judgement but refused to do so and sustained the error of the District Court in rejecting jurisdiction correctly alleged by petitioners and responded to by and proved by defendant.

"Where evidence was in all essentials undisputed, an Appellate Court may exercise its independent judgement with respect to the ultimate fact question, although it could not do so where contradictory evidence appeared."

Yunker v. C. I., 256 F. 2d 130.

The rejection of jurisdiction on the record before it was clear evasion on the part of the United States Court of Appeals.

There were no changes of law and fact before it but an amended allegation of jurisdiction was before the United States Court of Appeals to conform to proof on which in good conscience it should have conceded jurisdiction. The Circuit Court of Appeals evaded its responsibility to apply the law and equitable principles to the admitted facts even though the District Court made no findings and has caused much unnecessary expense and delay to petitioners

"A Court of Appeals was set up to review errors of law."

Valeck v. Atchison A. T. & S. F. Ry Co., 255 F. 2d 53, U.S.C.A. 28 ¶ 2106, Note 6.

The error of law was the rejection of jurisdiction. Equitable principles apply to relief which the Court could not grant without accepting jurisdiction.

"Where a Federal Court has no jurisdiction, it has no

power to make any order in it except to dismiss for want of jurisdiction."

Fisk v. Union Pac. R. Co. C. C. N. Y. 1869, Fed. Cas. No. 4, 827 U.S.C.A. 28 ¶ 1331, Note 24.

The amendments made in briefs before the United States Court of Appeals were material and appeared to be ignored by the Court.

"Not only will reviewing Court correct errors but it will also do substantial justice and in so doing will consider changes of law and fact which have occurred since the decision below."

U.S.C.A. 28 ¶ 2106, Note 7.

State of Washington v. U. S.—C. A. Wash. 1954, 214 F. 2d 33.

The question of jurisdiction was not even reviewed for a decision on equitable jurisdiction.

The United States Court of Appeals had before it briefs questioning the three successive orders to dismiss as representing the judgement of the District Court because two of the three fatally defective orders were signed in chambers.

"Judgement itself is not that which may be entered or recorded but that which is considered delivered by the Court."

Blickle v. Kent, 211 Mich. 216, 178 N.W. 680, American Jurisprudence, Vol. 30 A. p. 226 ¶ 983.

The fatal defects in orders 1, 2, 3 read from the record and are pointed out in briefs and in a petition for a rehearing before this Court.

The Appellate Court affirms orders 2 and 3.

"A judgement which is fatally defective on its face should not be affirmed by an Appellate Court, even though the Court may in proper cases remand the case to the Trial Court for further proceedings."

Ellis v. State, 100 Fla. 27, 69 ALR 783. American Jurisprudence, Vol. 3, p. 674 ¶ 1163.

"In order to have a judgement . . . vacated, the proof

of requisites and grounds relied upon for relief must be clear and satisfactory, or that a case must be made out as would justify a chancellor in entering the decree such as the one prayed for. Ammo." *95 ALR 1293, American Jurisprudence 30 A, p. 649.*

Petitioners entered a prayer for general relief in equity.

"Under a prayer for general relief, a decree which accords with the equities of the case may be shaped and rendered and the Court may grant an appropriate relief that conforms to the case made by the special prayer."

Sage v. Central R. Co., 25 L. ed. 394.
American Jurisprudence, Vol. 19, p. 282 ¶ 210.

Sustaining the fatally defective orders was an error of law on the part of the Court of Appeals and was without equity.

The fatal defects of the three successive orders to dismiss issued by the District Court are:

1. Order No. 1. The order issued from the bench was not signed and entered in the record. (Mimeographed record, p. 90.)

"An unsigned judgement is no judgement." *American Jurisprudence, Vol. 19, p. 843.*

Federal Rule 58 as amended by the Supreme Court, effective July 1, 1963.

"Every judgement shall be set forth as a separate document, a judgement is effective only when so set forth and entered as provided by Rule 79 (a)."

2. Order No. 2 was entered in chambers, following the hearing includes no statement the Court was without jurisdiction.

"An order made in chambers in a case requiring action by the Court is invalid." *Re Newman 75 Col. 213, American Jurisprudence, Vol. 19, p. 843, Note 6.*

The fact the order was written by an amicus curiae and was issued in chambers appears in the record. *(Copy in Appendix, p. 3, Appellants' Brief. See SG:RF on copy.)*

3. Order No. 3 was issued in chambers and represents to restate an order entered in the record May 28, 1962, in which the court stated it was without jurisdiction. The record shows there is no such order. The fatal defect permeates the entire order.

The District Court rejected jurisdiction in equity. The Court of Appeals on more substantial allegations of jurisdiction, amendment of an allegation of jurisdiction to conform to proof rejected jurisdiction and refused to concede after jurisdiction in equity was conceded that pursuant to *U.S.C.A. 28 ¶ 2283* the Court could enjoin proceedings in the 95th District Court in Dallas County, Texas.

> "The unconstitutionality of a state law is not of itself ground for equitable relief in the courts of the United States, but enforcement thereof will be enjoined where such injunction is essential in order effectually to protect property rights and the rights against injuries otherwise irremediable."
>
> *Terrace v. Thompson, U.S.C.A. 28 ¶ 2283, Note 54. Wash. 1923, 44 S. Ct. 15, 68 L. Ed. 255.*

Petitioners' right to due process has been permanently prejudiced in the 95th District Court in Dallas County, Texas.

Petitioners bring to the attention of the Court *Reynolds v. Stockton, 35 L.ed., p. 464*, and show:

> "To make a judgement conclusive proper parties must be present. Court must act upon the property according to the rights that apper in the record" (p. 469).
>
> "And it is upon the very ground that the parties have been heard, or have the opportunity of a hearing that the law gives so conclusive effects to matters adjudicated" (p. 469).
>
> "The merit and finding of an adjudication between the parties must within the limits heretofore stated be responsive to the issues tendered by the pleadings" (p. 469).

"Jurisdiction may be defined as the right to adjudicate concerning the subject matter of a given case.

First the Court must have cognizance of the class of cases to which the one adjudged belongs. Second the proper parties must be present. Third the point must be decided in substance and effect within the issue.

That a Court cannot go out of its appointed sphere and that its actions are void with respect to persons who are strangers to its proceedings, are propositions established by a multitude of authorities" (p. 468).

Reynolds v. Stockton, 35 L. ed., p. 464.

Defendant subjected himself to the general jurisdiction of the District Court and designated for appeal but filed no brief and did not appear on appeal.

The orders entered show the District Court exercised jurisdiction over defendant but include no findings on judicial admission. The Court of Appeals affirmed the judgement of the District Court, minus findings.

On May 16, 1962, an amicus curiae entered petitioners' suit in equity.

"It is not the function of an amicus curiae to take on himself the management of a cause and assume the functions of an attorney." *(Taft v. Northern Transp. Co., 56 N. H. 414 American Jurisprudence, 2d. p. 114.)*

In Court Mr. Godell did not speak. Judge Peurifoy, May 25, 1962.

"If Mr. Goodell has anything further to say then I will suggest that he proceed." (Mimeographed R., p. 87).

In the motion amicus curiae new issues were raised, that petitioners' pleadings did not state a cause of action on which relief could be granted.

"He may not introduce new issues only the issues raised by the parties may be considered" (amicus curiae).

Daines v. Silberman, 185 Misc. 335, 56 N. Y. 2d. 902, American Jurisprudence, Vol. 2d, p. 111 ¶ 3.

Amicus curiae wrote the order to dismiss, Judge Davidson signed in chambers May 25, 1962, entered in the record May 28, 1962.

"An amicus curiae ordinarily has no power to dismiss the cause because by so doing he assumes to act as attorney for defendant."

State v. McDonald, 63, Or. 467.

The fact that amicus curiae filed no certificate of service when the motion amicus curiae was granted reads from the record.

The only copy of the certificate of service is in the mimeographed R., p. 4. It is a copy of the original. This shows that the motion amicus curiae granted by the Court on May 16, 1963, was represented filed and granted on May 17, 1963. The Federal District Judge granted the motion May 16, 1962, but he did not have a certificate of service showing that a copy had been served to petitioners.

The District Court also ignored the fact that Rule 42, 1, 2, 3, Revised Rules of the Supreme Court shows the correct procedure concerning such matters.

The Federal District Judge did permit petitioners to file an affidavit on May 25, 1962, answering the affidavit of defendant filed May 16, 1962, and corrected the record Sept. 11, 1962, to show that petitioners' affidavit had been filed last. The docket entries in error showed defendant's affidavit filed May 29, 1962.

Since defendant made no answer giving any contradictory evidence, a Court of Appeals conceding jurisdiction in equity, correctly alleged by petitioners and proved by the admissions of defendant, could grant injunctive relief to petitioners and whatever other relief equity permits.

The statement amicus curiae attempts to identify defendant

with amicus curiae but the motion amicus curiae names him as defendant. Mimeographed R., p. 56. *Winterhaven v. Gillespie, 84 F. 2d 286,* shows a similar but not identical situation.

> "In view of the fact that the city of Winterhaven filed no answer and did not otherwise appear in the cause except through the intervening friends of the Court they are without standing to appeal."
>
> *American Jurisprudence, Vol. 2, p. 679 ¶ 4, 6, 7, 287.*

In petitioners suit defendant made an appearance with amicus curiae and it would appear that Mr. Goodell would be without standing to appeal.

In the United States Court of Appeals, Fifth Circuit Mr. Goodell spoke. He concluded the argument contrary to Rule 25, Rules of the United States Court of Appeals, Fifth Circuit.

The copies of the two orders entered by the United States Court of Appeals, one on April 29, 1963, and one on July 22, 1963, were sent to Mr. Goodell.

On June 20, 1963, exhibits filed and subpoenaed by petitioners, before petitioners' petition for a rehearing was filed on July 10, 1963, were returned to the office of the clerk of the United States District Court stating Mr. Goodell would withdraw them by special motion. The fact the exhibits had been returned was discovered by petitioners by accident.

A motion was filed by petitioners Aug. 22 in the United States Court of Appeals which ordered the exhibits returned to the office of the clerk of that Court.

All the copies the instruments filed are in the Appendix, with the dates as shown.

The intervention by Mr. Goodell, in different roles is permitted by both courts below is so irregular as to call for this Court's power of supervision.

Reasons for Granting the Writ

1. The decision of the Court below is at variance with this Court's holdings in *Ex Parte Young v. Minnesota, 21 S. Ct. 441,* in which it is held that individuals who as officers of the state are clothed with some duty in regard to the enforcement of the laws of the state who threaten to enforce against parties an unconstitutional act may be enjoined in a Federal Court in equity from such action. *U.S.C.A. 28 ¶ 1331, Note 52.*

The complaint shows the District Court had exclusive and primary jurisdiction over instant suit.

The decision of the Court below in affirming the judgement of the District Court that it was without jurisdiction is at variance with this Court's holdings in *Ex Parte Young v. Minnesota* which shows under the circumstances stated the District Court had jurisdiction, exercised it by allowing judicial admissions in evidence in this Court and that dismissing petitioners' suit in equity was a clear misapplication of the law and principles of equity to the facts.

2. The decision of the Court below is at variance with this Court's holdings in *Green v. Louisville and Interurban R. R. Co., 61 L. ed. 1280, Western Union Teleg. Co. v. Andrews, 54 L. ed. 430,* which are cited in *Republic Acceptance Corp. v. De Land, 275 F. 632 (Michigan U. S. District Court) U.S.C.A. 28 ¶ 1331, Note 52.*

In *Green v. Louisville and Interurban R. R. Co., 61 L. ed. 1280* this Court decided that a Federal Court in equity has jurisdiction when an individual, an officer of a state enforces against litigants in his Court an unconstitutional statute of a state and that whether the statute is unconstitutional or not that when a state statute is enforced in a discriminatory manner by an officer of a judicial branch of the state the Federal Court in equity has jurisdiction.

Petitioners amended an allegation of jurisdiction, pursuant to *U.S.C.A. 28 ¶ 1653,* in briefs before the United States Court of Appeals to conform to the proof, the statement of defendant in the affidavit he filed May 16, 1962, that he had enforced against petitioners a state statute repugnant to Amendment 14 or that he had enforced the statute in a manner to discriminate against petitioners in the District Courts in Dallas County.

Texas, by talking to judges about 76935 A/D in his court.

The United States Court of Appeals, Fifth Circuit, rejected jurisdiction for petitioners' suit in equity, a decision at variance with this Court's holdings in *Green v. Lousville and Interurban R. R., 61 L. ed. 1280* quoted in *Republic Acceptance Corp. v. De Land, 275 F. 632.*

3. The decision of the Court below is at variance with this Court's holdings in *Panama Mail Steamship Co. v. Vargas, 74, L. ed. 1105.*

> "It is insisted that the findings of the Circuit Court should have bounded and concluded the Court of Appeals on questions of fact. The difficulty is there is nothing to show what the Circuit Court found to be the facts" (p. 1106).

> "In the District Court . . . made no findings of fact other than such as may be implied from the decree" (p. 1106).

> "In the present case we think that the situation requires that the decrees of both courts be vacated and the case remanded to the District Court with directions to make specific findings of fact and take such further proceedings as may be in conformity with law" (p. 1107).

Panama Mail Steamship Co. v. Vargas, 74 L. ed. 1105.

The United States Court of Appeals, Fifth Circuit, omitted from the decision that the District Court did not show findings of fact, that the admissions of defendant concurred in by petitioners resolved the ultimate and material facts that defendant had denied due process of law and the equal protection of the laws to petitioners.

The United States Court of Appeals refused to vacate the orders of the District Court made without findings of fact, to concede jurisdiction, and to make findings on the amended allegation of jurisdiction to conform to proof that defendant had enforced against petitioners an unconstitutional act.

The decision of the Court below is clearly at variance with this Court's holdings in *Panama Mail Steamship Co. v. Vargas.*

4. The decision of the Court below is at variance with the

holdings of this Court in *Reynolds v. Stockton, 35 L. ed., p. 464.*

> "The merits and finality of the adjudication between the parties must be within the limits heretofore stated be responsive to the issues tendered by the pleadings." *ibid. p. 469.*

The answers of defendant were responsive to the issues tendered by the pleadings. The orders of the District Court affirmed by the Court below were not.

Both Courts below refused to concede the class of the suit ine quity brought under *U.S.C.A. 28 ¶ 1331, Note 52.*

Defendant was not present in the United States Court of Appeals, Fifth Circuit.

The decision of the United States Court of Appeals on the record before it is at variance with the decision of this Court in *Reynolds v. Stockton, 35 L. ed. p. 464.*

5. The decision of the Court below is at variance with this Court's holdings in *Wetmore v. Rymer, 169 U. S. 115, 42 L. ed. 682.*

> "A suit cannot be properly dismissed by a Circuit Court as not substantially involving a controversy within its jurisdiction unless the facts made to appear on the record create a legal certainty of the conclusion."

The uncontradictable fact in the record which creates a legal certainty of a conclusion that defendant enforced against petitioners, Texas RC.S. 199, Section 8, was not conceded by the Court of Appeals.

The decision of the Court below is at variance with this Court's holdings in *Wetmore v. Rymer, 169 U. S. 115; 42 L. ed. 682.*

6. The decision of the Court below is at variance with the holdings of the United States Court of Appeals, 5th Circuit, in 1936 in *Winterhaven v. Gillespie 81 L. ed. 447* in which the Court held an amicus curiae is without standing to appeal. The case is substantially in accord with *In Re Ohlhauser's Estate (SD) 101 N. W. Ed. 827.* "The appearance of an amicus curiae is not an appearance for a party."

Defendant was in the role of a defendant on April 25, 1962, on September 25, 1962, in Nov. ... 1962, and Dec. 5, 1962, when he filed and designated in proceedings the same affidavit he filed with the motion amicus curiae on May 16, 1962.

On February 25, 1963, defendant wrote to petitioners he was not the defendant in No. 19852 in which he had made appearances in proceedings. Petitioners in a supplemental brief answered defendant. *(See letter appellants' supplementary brief.)*

Amicus curiae filed a brief for appellee and was present at the hearing on April 4, 1963, in which he spoke. After a petitioner had concluded the argument; amicus curiae contrary to Rule 25 of the Rules of the Fifth Circuit concluded the argument.

The fact was brought to the attention of the United States Court of Appeals, Fifth Circuit, in a petition for a rehearing. Copies of both of the orders of the United States Court of Appeals were sent to amicus curiae, not to defendant as the covering letters from the Court show.

In Winterhaven v. Gillespie, 84 F. 2d, 285 (pages 287-288) below.

"The defense did not answer and made no defense ... either on facts or law."

... "They (amicus curiae) came in by a pleading specifically fixing their status.

Limiting it to that of friends of the court. Thus they have no status except as that ... they are without standing to appeal." *ibid, p. 288.*

In *U. S. v. Beebe, 45 L. ed. 563* ~~the orders issued followed~~ the unauthorized appearance of an attorney. *(U. S. v. Beebe was decided by this Court.)*

The unauthorized appearance of Mr. Goodell, permitted without the Court of Appeals ruling on his status when he entered the Court below as an amicus curiae, was at variance with the rulings of the Fifth Circuit in 1936 in *Winterhaven v. Gillespie, 84 F. 2d 286.*

Contrary to the rulings of the Fifth Circuit in 1936, in 1963 an amicus curiae dominated the proceedings.

After the hearing, on June 20, 1963, before petitioners had

mailed the petition for a rehearing to the U. S. Court of Appeals, which was filed July 10, 1963, the exhibits (part of a motion to attach exhibits to the original motion) and other exhibits subpoenaed by petitioners May 18, 1962, were returned from the office of the clerk of the U. S. Court of Appeals to the office of the clerk of United States District Court with a covering letter, a copy of which was sent to amicus curiae and not to petitioners. The letter stated amicus curiae would withdraw the exhibits by special motion.

On Aug. 16, 1963, a special motion was made and all data concerning same is in Appendix pp.

Thereafter on protest from petitioners the exhibits were requested to be returned to the clerk of the United States Court of Appeals.

7. The decision of the Court below is at variance with the decision of the United States Court of Appeals, 7th Circuit, in *Smith v. Dravo Corporation C.A. Ill 1963, 208 F. 2d 388.*

> "The Appellate Court is bound to decide the case to the extent that it is in the condition to be decided and to direct such decree as may under all circumstances be proper."
>
> *Smith v. Dravo Corp. C.A. Ill. 1953, 208 F. 2d, 388, U.S.C.A. 28 § 2106. Note 193.*

The suit in equity was in a condition to be decided on the admissions of defendant, particularly the one about the enforcing of Texas R.C.S. 199, Section 8 which is uncontradictable. The United States Court of Appeals sustained the fatally defective orders of the District Court.

The decision of the United States Court of Appeals, Fifth Circuit, is at variance with the decision of the U. S. Court of Appeals, 7th Circuit, in *Smith v. Dravo Corporation.*

8. The decision of the Court below is at variance with the decision of the United States Court of Appeals, 2nd Circuit, in *Empressa Hondurena De Vapores S. A. v. Ivan C. McLeod* in refusing to fashion an appropriate decree in accordance with the general equitable principles applicable to petitioners' suit in equity. Conceding jurisdiction precedes granting injunctive relief but the sequence of judicial admissions in the District Court constituted proceedings so that the three successive orders to dismiss are injunctive orders.

In the *Empressa Hondurena De Vapores S. A. v. Ivan C. McLeod, 2 Circ., 300 F. 2d. 222* on strong showing of irreparable harm to foreign relations of U. S. with Honduras without any harm to defendant, if injunction granted, a preliminary injunction was granted.

A permanent injunction is required to be issued to petitioners to prevent irreparable harm.

"Actually the facts are not substantially in dispute." The facts are not substantially in dispute in petitioners' suit in equity that defendant has denied due process of law and the equal protection of the laws to petitioners and has admitted it and that there is no relief for petitioners except by this Court granting an injunction and directing removal of No. 76935 A/D to the U. S. District Court.

The Court of Appeals refused to concede jurisdiction in equity and that the Court "must and does correct such mistakes of law, as a matter of course on appeal from a denial of injunctive relief." *(Empressa Hondurena De Vapores S.A. v. Ivan C. McLeod.)*

The decision of the Court below at variance with the decision of the United States Court of Appeals, Second Circuit, in *Empressa Hondurena S.A. v. McLeod* and shows a complete disregard of the irreparable harm to petitioners ~~the decision results in.~~ In the case cited on strong showing of irreparable injury injunctive relief was granted.

9. The decision of the Court below is at variance with the decision of the United States Court of Appeals, 6th Circuit, in *Clemons v. The Board of Education of Hillsboro, 228 F. 2d. 853.*

> "The grounds for equitable jurisdiction to interfere is therefore something dehors the issues something arising out of or connected with the trial itself of the legal action in the court of law."

Petitioners' original motion, particularly the affidavit (mimeographed, R., p. 15) showed plainly the suit in equity, arose out of the hearing on an action at law in the 95th District Court in Dallas County, Texas. Every subsequent pleading showed the same. The Appellate Court had jurisdiction and refused to exercise it.

Further it was pointed out by petitioners in briefs particularly that the ~~District~~ Court had jurisdiction in equity.

"The incompleteness and inadequacy of the legal remedy is the criterion which under the settled doctrine determines the right to the equitable remedy by injunction."

Clemons v. The Board of Education of Hillsboro.

"The allegations of the complaint were sufficient, the evidence was undisputed, and it was undisputed that defendants ignored the statutory and constitutional rights of these plaintiffs." *ibid, p. 857.*

The decision of the Court below is at variance with the decision of the United States Court of Appeals, 6th Circuit, in *Clemons v. The Board of Education of Hillsboro, 228 F. 2d. 853.*

The Court should grant this writ to do substantial justice.

10. The decisions of the Court below is at variance with this Court's holdings in *Porter v. Warner, 328 U. S. 395 and Hecht v. Bowles, 321 U. S. 321, 329* . . .

". . . power is thereby resident in the District Court, in exercising this jurisdiction," to do equity and mould each decree to the particular case. *Hecht v. Bowles, 321 U. S. 321, 329* . . .

"In addition, the Court may go beyond matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary under the circumstances. Only in that way can equity do complete rather than truncated justice." *(328 U. S. at 398.)*

Pomeroy in his Equity Jurisprudence stated that equitable doctrines are not in conflict with legal rights. *Vol. 1, § 102-104 a.*

Vol. 1, p. 189. "Cases in which the remedy sought and obtained is one which equity courts alone are able to confer, must upon any consistent system of classification belong to the exclusive jurisdiction of equity."

Vol. 1, p. 124. "Equity does deal certainly largely with remedies and rights to them, and the opinion has been maintained by some modern writers it consists of nothing else."

In the statement of the case herein it is clearly explained that the rights denied were legal rights the remedy is equitable. The first step toward injunctive relief was for the District Court to concede jurisdiction in equity, then on the facts and

Next the district court should have granted the petition for removal (before the U. S. District Court and unlisted in the Per Curiam decision). Petitioners pointed out to the Court below, in open court, that defendant enforced a change of venue or a special remedy which is discriminatory and contrary to Amendment 14.

In refusing to concede jurisdiction in equity (alleged by petitioners) exercised in a measure by the District Court and to grant complete relief in equity, the Court below in affirming "judgement" based on a fatally defective order is at variance with this Court's holdings in *Porter v. Warner and Hecht v. Bowles.*

11. The decision of the Court below is at variance with the decision of the United States Court of Appeals, Second Circuit, in *Young's Rubber Corp. v. C. I. Lee Co., 45 F. 2d 103.*

> "Pleadings may be amended to conform to proof but not to allege facts not proved below." *45 F. 2d 103.*

Petitioners in briefs before the United States Court of Appeals, Fifth Circuit had amended an allegation of jurisdiction to conform to proof, also pursuant to *U.S.C.A. 28 ¶ 1653*, that defendant had enforced against petitioners a state statute repugnant to Amendment 14 and had made the admission in an affidavit he filed in the United States District Court on May 16, 1962, admitted in evidence by the Federal District Judge who would not permit amendment, permitted by statute, to conform to proof.

The United States Court of Appeals, Fifth Circuit, compounded the error of the District Court by refusing to concede jurisdiction even though the amendment of the allegation of jurisdiction to conform to proof had been made in briefs before the United States Court of Appeals, Fifth Circuit. The decision of the Court, therefore, was at variance with the decision of the United States Court of Appeals, Second Circuit, in *Young's Rubber Corp. v. C. I. Lee & Co., 45 F. 2d 103.*

12. The United States Court of Appeals, Fifth Circuit, has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by a lower court as to call for this Court's power of supervision.

1. The effect of the Per Curiam decision would be paralyz-

ing except that the decision is fatally defective on its face showing excerpts from two fatally defective orders of the Federal District Court, each with a different representation on jurisdiction therein.

Both orders are injunctive orders, successively entered in proceedings held on a motion for a preliminary injunction, heard on affidavits but no findings were entered in the record or in the orders issued.

Jurisdiction is so fundamental in the United States Courts that different representations about jurisdiction in two successive orders to dismiss without further proceedings would require inquiry which the Per Curiam decision affirming the "judgement" of the District Court does not show.

The entire Per Curiam shows manifest error of fact and manifest error of law.

To understand differences in the ruling of the Federal District Judge and of the United States Court of Appeals it is necessary to examine the record.

The Per Curiam decision stated petitioners did not state a claim on which relief could be granted and amendment could not improve pleadings and that this statement is an affirmation of the "judgement" of the Federal District Judge. That statement the record denies. Judge Davidson said:

"It makes no difference how the pleadings are worded."

According to *McBrine v. Silverman*, 121 F. 2d 181 — U.S.C.A. 28 § 2106, Note 65

"A circuit court of appeals may not affirm a judgement on a ground not assigned by the trial court."

According to *Dean v. Davis*, 212 F. 68, U.S.C.A. 28 § 2106, Note 68

"A judgement appealed from may be affirmed, if the Appellate Court finds in the record any reason which it considers sound, though such reason may have been rejected by the trial judge."

Neither authority quoted gives the answer to the rulings of the two Federal Courts below.

A Federal district judge exercised jurisdiction over a defendant, admitted evidence, made rulings before issuing an order to dismiss. The orders to dismiss successively entered show different representations about jurisdiction, one stating

nothing about jurisdiction, the next one stating the Federal District Court did not have jurisdiction.

The United States Court of Appeals, Fifth Circuit, affirmed the "judgement" of the Federal District Judge.

Petitioners submit that the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision.

II. A motion for a preliminary injunction is an equity suit from its nature, particularly when filed in general Federal question jurisdiction pursuant to *U.S.C.A. 28 ¶ 1331, Note 52.*

In No. 9097 filed in primary and exclusive equity jurisdiction in the United States District Court defendant subjected himself to the general jurisdiction of the Court by his answers, one of which was a motion to dismiss and the Court made judicial determinations by permitting judicial admissions in evidence. Petitioners amended an allegation of jurisdiction pursuant to *U.S.C.A. 28 ¶ 1653* in briefs before the United States Court of Appeals, Fifth Circuit, to conform to proof.

Uncontradictable evidence was before the United States Court of Appeals, Fifth Circuit, that defendant had denied petitioners the equal protection of the laws by enforcing against them a state statute repugnant to Amendment 14 thereby forcing a change of venue for 76935 A/D from the District Courts in Dallas County, Texas, or a special remedy in the 95th District Court in Dallas County which was discriminatory and in violation of petitioners' rights under Amendment 14.

It has been established a Federal District Court has no discretion to deny relief by preliminary injunction by one who establishes by undisputed evidence he has been denied a constitutional right. *Henry v. Greenville Airport Commission, 284 F. 2d 631.*

The United States Court of Appeals by failing to remand the suit in equity for findings on evidence in the record so far departed from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision.

In a suit in which no findings were made the Court of Appeals can remand

". . . for preparation of findings without trial, if the judge who presided can do so without trial."

Panama Mail Steamship Co. v. Vargas, 74 L. ed. 1105. U.S.C.A. 28 § 2106. Note 259. Circuit.

The fact that the suit is an equity suit and that there is uncontradictable evidence that defendant denied petitioners constitutional rights means that on the evidence before the United States Court of Appeals that Court could enter a decree without delay.

"In a suit in equity for patent infringement, pending 18 years . . . the Appellate Court would not remand the case for proceedings but would from the evidence in the record ascertain the proper amount and render a decree therefor."

Tuttle v. Claflin N. Y. 1869, 76 F. 327, 2nd Circuit. U.S.C.A. 28 § 2106, Note 187.

The fact the United States Court of Appeals did not concede jurisdiction in equity and missed the "law of the case" on the record before it was such a departure from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision. The record shows the Federal District Judge exercised jurisdiction. The United States Court of Appeals should have entered a decision on the facts.

III. The rights given to an intervener in the United States District Court sanctioned by the United States Court of Appeals, Fifth Circuit, shows such a departure by a lower Federal Court from the usual course of judicial proceedings as to call for this Court's power of supervision, particularly when the United States Court of Appeals, Fifth Circuit, compounded the error concerning irregular intervention in the District Court by permitting irregular intervention in the United States Court of Appeals which in turn showed that Court so far departed from the accepted course of judicial proceedings in permitting irregular intervention as to call for this Court's power of supervision.

The Federal District Judge signed in chambers an order to dismiss written by an amicus curiae.

The United States Court of Appeals, Fifth Circuit, permitted an attorney who intervened in the United States District Court as an amicus curiae to intervene in the United States Court of

Appeals as an attorney for defendant without questioning the change of status. The intervener further was permitted to discuss venue, not permitted in usual procedure.

The Appellate Court did not question the intervener concerning why defendant was not present and the reason defendant filed a designation pro se for appeal and no brief.

The United States Court of Appeals, Fifth Circuit, so far departed from the usual course of judicial proceedings as to call for this Court's power of supervision.

The absence of defendant from the hearing April 4, 1963, should not alter petitioners' right to relief in equity.

"The subsequent withdrawal of a plea does not affect the Court's jurisdiction over the person . . . the appearance remains."

American Judisprudence, Vol. III, p. 811 ¶ 43.

"Usually the Federal Supreme Court will grant leave to withdraw an appearance whenever asked, saving, however, all the rights of the adverse party."

IV. The United States Court of Appeals, Fifth Circuit, so far departed on June 20, 1963, from the accepted and usual course of judicial proceedings in returning exhibits filed by petitioners, a part of the record, before petitioners' petition for a rehearing was filed on July 10, 1963, as to call for this Court's power of supervision.

The return of the exhibits showed the United States Court of Appeals, Fifth Circuit, had decided not to grant the petition for rehearing before it was filed *(stare decisis)*.

The principal ruling in the Per Curiam decision was not affirmation, though the decision represents to affirm.

The Federal District Judge said

"It makes no difference how the pleadings are worded." (Mimeographed, R., p. 46)

The United States Court of Appeals, Fifth Circuit, stated petitioners did not file a claim on which relief could be granted, disregarding a hearing on affidavits on petitioners' motion for a preliminary injunction on May 25, 1962, on which no findings were made. *(Moore's Manual, 1963, p. 630)* A hearing sufficient for a decision had occurred in Federal District Court.

Judicial admissions constituted facts and proof showing a state of facts to support petitioners' claim.

Leiner v. State Mutual Life Assurance Co., 108 F. 2d 302.

V. The petition for a rehearing, evidently decided before it was filed, showed petitioners could amend to show a claim on which relief could be granted. A prayer for general relief in equity (page 4, as corrected petition for a rehearing) and two instruments filed with the petition for a rehearing showed amendments on which relief in equity could be granted: The instruments are:

1. Appellants' amended allegation of jurisdiction and petition for the Court to issue a writ of injunction pursuant to *U. S. C. Title 28 ¶ 1651.*

2. Amended petition for removal of 76935 A/D from the State District Court to the United States District Court.

When a United States Court concedes jurisdiction in equity properly alleged and proved the United States Court can issue a writ of permanent injunction pursuant to *U.S.C.A. 28 ¶ 1651.*

The petition for removal correctly shows removal is statutory, *U.S.C.A. 28 ¶ 1441 (b)*, that 76935-A/D has never been pre-tried, that defendant has persisted in preventing removal of 76935 A/D from the 95th District Court in Dallas County, Texas, over which he presides, that permanent denial of due process of law and the equal protection of the laws for 76935 A/D is the status in the 95th District Court in Dallas County, Texas, in which Court the Judge of the Court continuously violates petitioners' rights under Amendment 14.

Amendment has been made by petitioners to show a claim on which relief could be granted.

The fact the Court of Appeals decided amendment to pleadings sufficient for relief could not be made, before a petition for a rehearing was filed, and returned a portion of the record to the office of the United States District Court is such departure from the usual course of judicial proceedings as to call for this Court's power of supervision.

It should be evident the relief prayed is necessary for relief in equity for petitioners, that they face continuous denial of due process of law and the equal protection of the laws in the State Courts and unnecessary and burdensome litigation (multiplicity of proceedings).

Conclusion

Petitioners in briefs and petitions before the United States Court of Appeals showed the Court the facts, denial of due process of law, and the equal protection of the laws, were not in dispute and that after the facts were admitted in evidence the Federal district judge issued an order to dismiss and that the amendment to conform to proof the Federal district judge would not permit petitioners to make they made an appeal.

The return of exhibits to the office of the clerk of the United States District Court, without notice to petitioners, before petitioners' petition for a rehearing was filed, is explained herein.

Below are excerpts from a report of a successful court reform in one of the states of the United States in the interest of due process.

In FUNCTIONING UNDER THE 1947 CONSTITUTION OF NEW JERSEY by the Honorable Albert E. Burling TEMPLE LAW QUARTERLY, 1950, p. 174.

> "One of the greatest savers to the Court, as well as to counsel is that each judge must read the briefs in advance of oral argument."

> "The attorney . . . must be prepared to stand up in Court in defense of his position, a requirement that is an aid to the conscientious litigant and a deterrent to the unscrupulous adversary." *ibid, p. 175.*

> "Shortly before the new judicial system came into being Chief Justice Vanderbilt stated that the Court would adopt its lodestar and goal that the Court would b "an industrious court, an efficient court, a just court . . ." *ibid, p. 171.*

> "For example, there has been reduced the chances of an unscrupulous litigant beginning an action which he knows would be unsuccessful if forced to trial." *ibid, p. 172.*

"The truth is always the truth and telling the truth never hurt anyone except insofar as he ought to be hurt." *Quirk v. Quirk, 259 Fed. 597, 599 (S. D. Cal. 1919).*

Petitioners unless this writ is granted are deprived of property without due process of law in the state courts, because defendant denied them due process of law and effected discrimination against them in the state courts and the Federal courts granted no relief to petitioners.

Wherefore petitioners pray that a writ certiorari be granted and that the judgement below be reviewed by this Court.

Respectfully submitted,

Robert M. Williamson, Jr.,
Marjorie Williamson,
Individually and as Independent
Executors of the Estate of
Effie Gilmer Williamson

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 19852.

EFFIE GILMER WILLIAMSON, ROBERT M. WILLIAMSON, JR. and MARJORIE WILLIAMSON,
Appellants,

versus

THE HONORABLE PAUL PUERIFOY, Judge of The 95th District Court in Dallas County, Texas,
Appellee.

Appeal from the United States District Court for the Northern District of Texas.

(April 29, 1963)

Before RIVES and GEWIN, Circuit Judges, and SHEEHY, District Judge.

PER CURIAM: The appellants pro se filed in the district court their motion for a preliminary injunction "enjoining the Honorable Paul Puerifoy, Judge of the 95th District Court of Dallas County, Texas, pending the final hearing and determination of this action from destroying Plaintiffs' legal and constitutional rights so that Civil Action No. 76-

935 shall be tried on all allegations of fact by a jury; that Plaintiffs may have due process of law and the protection of the laws of the United States provided by the Constitution to all citizens of the United States; freedom of speech to pursue the correct trial of their cause; the right of every citizen that his cause he tried by judges as free, impartial and independent as the lot of humanity will admit; and that for Plaintiffs justice shall be administered without delay, denial, or prejudice." The motion was amended several times. Eventually, the district court ordered "that the Motion for a Preliminary Injunction and all complaints and motions of Plaintiffs filed herein be and same are hereby dismissed."

The plaintiffs then filed several motions, such as, to amend that order, for a rehearing, and to correct the record. In ruling upon those motions the learned district judge patiently explained:

> "At the time of entering said order, rendering the same from the bench in open court, the Court made it clear to the plaintiff Marjorie Williamson why he was without jurisdiction: simply because a Federal court had neither appellate nor supervisory control over a State district judge. The plaintiff Marjorie Williamson is a lady who commands the respect of the Court and of the public, but she is before the Court here asking for something that the Court is without power to grant.
>
> "Plaintiffs filed a suit in the State court of Dallas County, Texas, which came up for hearing before the Honorable Paul Peurifoy, Judge of the

95th Judicial District Court in Dallas County. The ruling of the Court was not acceptable to the plaintiffs and they come to the Federal court for a correction of such ruling and for instruction of the Federal judge as to how the case should be tried.

"In deference to the fact that the plaintiff is a lady deserving consideration at our hands or the hands of any court we will again undertake to make clear to her why this court has no jurisdiction.

"In the first place, the State courts are older than the Federal courts. They were here administering justice and functioning between litigants for 150 years before the Federal Government was organized. When the Constitution was written and adopted these State courts were not abolished nor subordinated to the national courts created by the Constitution of the new nation. The national courts have jurisdiction only of those things conferred upon them by law. And at the time of the creation of the national courts and at time of writing the Constitution itself the State courts were kept as a separate and distinct judicial institution. As a result all cases that originate in the State court must be appealed to an appellate court of the State and thence to the Supreme Court of the State. All cases originating in the United States court must be appealed to the Circuit Court of the United States c to the Supreme Court of the United States. Nowhere has a Federal trial court been given supervisory or appellate jurisdiction over State judges.

"This Court sitting as a Federal judge has no more authority to tell Judge Peurifoy how he must try your lawsuit than he has to tell us how we must run our court.

"Such being the case the plaintiffs have mistaken their forum and have come to this court for relief that we are powerless to grant. Their case was originally dismissed for this reason and for the same reason the three motions that are now before us are also dismissed.

"The case no longer holds any place upon the docket of the court and the Clerk is instructed to file nothing further herein unless expressly instructed by the Court."

We cannot make the matter any clearer. It is perfectly plain that Section 2283 of Title 28, United States Code,[1] denies jurisdiction to a federal court to enjoin proceedings in a State court except in unusual circumstances not here present.

The judgment is

AFFIRMED.

[1] "§2283. *Stay of State court proceedings.*
"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 19852

EFFIE GILMER WILLIAMSON, ROBERT M. WILLIAMSON, JR. and MARJORIE WILLIAMSON,

Appellants,

versus

THE HONORABLE PAUL PURRIFOY, Judge of The 95th District Court in Dallas County, Texas,

Appellee.

Appeal from the United States District Court for the Northern District of Texas.

(JULY 22 1963)

O R D E R

Before RIVES and GEWIN, Circuit Judges, and SHEEHY, District Judge.

PER CURIAM:

The petition for rehearing and each of the other petitions filed therewith, that is, the petition to be allowed to amend the allegation of jurisdiction, the petition for this Court to issue a writ of injunction, and the amended petition for removal of a case from the 95th District Court in Dallas County, Texas, to the United States District Court, are hereby

DENIED.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 52
NEW ORLEANS 9, LA.

July 22, 1963

Mr. Robert M. Williamson, Jr.
Mrs. Effie Gilmer Williamson and
Mrs. Marjorie Williamson
4929 Gaston Ave.
Dallas, Texas

Re: 19852 - EFFIE GILMER WILLIAMSON, ROBERT M. WILLIAMSON, JR. AND MARJORIE WILLIAMSON -vs- THE HONORABLE PAUL PUERIFOY, Judge of the 95th District Court in Dallas County, Texas

Gentlemen:

You are hereby advised that the Court has today entered an order denying the Petition for Rehearing in the above case. No opinion was rendered in connection therewith.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH
Clerk

cc: Mr. Sol Goodell

COPY OF ORDER ENCLOSED.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408, 400 ROYAL ST.
NEW ORLEANS 16, LA.

June 20, 1963

Mr. John A. Lowther
Clerk
U. S. District Court
Dallas, Texas

Re: No. 19852 -- Effie Gilmer Williamson, et al
-vs- The Honorable Paul Puerifoy, etc.

Dear Sir:

Returned herewith are the eleven (11) original documentary exhibits in the referenced case, which I understand will be withdrawn from your office by special motion of Mr. Sol Goodell, in order to have same repossessed and delivered to the District Court of Dallas County.

By copy of this letter I am asking Mr. Goodell to have said motion prepared and filed in your office.

These exhibits are no longer needed by this office. Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By [signature]
Chief Deputy Clerk

/bwc
Enclosure
cc: Mr. Sol Goodell

Received June 24, 1963.
John A. Lowther Clerk

By [illegible]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EFFIE GILMER WILLIAMSON, et. al., PLAINTIFFS	CIVIL ACTION NO. 9097
VS.	
THE HONORABLE PAUL PURSIFOY JUDGE OF THE 95TH DISTRICT COURT IN DALLAS COUNTY, TEXAS, DEFENDANT	

MOTION FOR ORDER TO RETURN ORIGINAL DOCUMENTS TO STATE COURT

TO SAID HONORABLE COURT:

SOL GOODELL, attorney for the Defendants in the state court proceeding entitled Effie Gilmer Williamson, et al. v. Annie Gilmer, et al., now pending in the 95th Judicial District Court of Dallas County, Texas, and being No. 76935-A/C/D therein, moves the Court for an Order that the original pleadings, motions and orders of said 95th Judicial District Court be returned by the United States District Clerk to the District Clerk of Dallas County, Texas, on the grounds that said original pleadings, motions and orders of said state court are a necessary and vital part of the proceedings and documents in said court and are necessary to be returned to said court in order that said state court proceeding may be tried; and such documents are not needed in this court and have not been filed herein and should never have been removed from the permanent records of the District Clerk of Dallas County, Texas, wherein said state court proceeding is still pending untried:

1. Defendants' Second Amended Original Answer and Cross-Action filed January 19, 1961.
2. Defendants' Third Amended Original Answer and Cross-Action filed March 13, 1961.
3. Motion of James C. Allums, Jr., Attorney, to Withdraw filed April 12, 1961.
4. Interlineations to Plaintiffs' Third Amended Original Petition filed April 14, 1961.

5. Order Allowing Attorney, James C. Allums, Jr., to Withdraw as Attorney for Plaintiffs dated April 12, 1961.

6. Order dated April 12, 1961 Relating to Special Exceptions of Defendants in their Third Amended Original Answer and Cross-Action Answering Plaintiffs' Third Amended Original Petition.

7. Letter dated April 11, 1961, to Hon. Paul G. Puerifoy, signed by Mr. Sol Goodsell.

WHEREFORE, this movant prays that Marjorie Williamson and Robert N. Williamson, Jr., individually and as Independent Executors of the Estate of Effie Gilmer Williamson, Deceased, be given due notice of the hour and date of the hearing of this motion; and that upon said hearing the Court grant this motion and order said documents returned to the District Clerk of Dallas County, Texas.

THOMPSON, KNIGHT, WRIGHT & SIMMONS

Attorneys for Defendants

Address of Attorneys -
2300 Republic National Bank Bldg.
Dallas, Texas

NOTICE OF MOTION

TO MARJORIE WILLIAMSON
AND ROBERT N. WILLIAMSON, JR.:

Please take notice that the undersigned will bring the above motion on for hearing before the United States District Court in the United States Courthouse, Dallas, Texas, on the ____ day of August, 1963, at _____ o'clock, _. M. of that day or as soon thereafter as counsel can be heard.

THOMPSON, KNIGHT, WRIGHT & SIMMONS

Attorneys for Defendants

Address of Attorneys -
2300 Republic National Bank Bldg.
Dallas, Texas

ORDER

This day came on to be heard the Motion of Sol Goodell, attorney for the Defendants in the State Court proceeding entitled Billy Gilmer Williamson, et al. v. Annie Gilmer, et al., that the original pleadings, motions and orders of the 95th Judicial District Court of Dallas County, Texas, described below be returned by the United States District Clerk to the District Clerk of Dallas County, Texas:

1. Defendants' Second Amended Original Answer and Cross-Action filed January 19, 1961.

2. Defendants' Third Amended Original Answer and Cross-Action filed March 13, 1961.

3. Motion of James C. Alluma, Jr., Attorney, to Withdraw filed April 12, 1961.

4. Interlineations to Plaintiffs' Third Amended Original Petition filed April 14, 1961.

5. Order Allowing Attorney, James C. Alluma, Jr., to Withdraw as Attorney for Plaintiffs dated April 12, 1961.

6. Order dated April 12, 1961, Relating to Special Exceptions of Defendants in their Third Amended Original Answer and Cross-Action Answering Plaintiffs' Third Amended Original Petition.

7. Letter dated April 11, 1961 to Hon. Paul G. Fourilby, signed by Mr. Sol Goodell.

And Plaintiffs in this cause having been given due notice of such Motion and the Court being of the opinion that said State Court documents belong in and are proper records of the State Court, it is therefore ORDERED that the above described original pleadings, motions and orders of the 95th Judicial District Court of Dallas County, Texas, now in the possession of the United States District Clerk, be returned to the District Clerk of Dallas County, Texas.

Signed this _____ day of August, 1965.

United States District Judge

THOMPSON, KNIGHT, WRIGHT & SIMMONS
ATTORNEYS AND COUNSELORS
REPUBLIC NATIONAL BANK BUILDING
DALLAS 1, TEXAS
TELEPHONE AREA CODE 214 RIVERSIDE 1-4721
CABLE TOMTEX

GORDON SIMPSON OF COUNSEL
THOMAS A. KNIGHT
BARNEY GRISSOM
HAROLD F. THOMPSON
JOHN W. PUTMAN, JR.
J. CLAUDE JACKSON, JR.
ROBERT E. RAIN, JR.
TALBOT RAIN
GENE EMERY
RICHARD L. JONES
FRED L. HAMRIC
WILLIAM D. NEARY
HAROLD F. KLEINMAN
DAVID S. RIDDER
BARNEY T. YOUNG
MARSHALL J. DORE, JR.
JAMES W. ROSS
JOHN A. GILLIAN
CLIFFORD P. BERRY
BRIGHT L. SIMMONS
SOL GOODELL
WILLIAM H. NEAR
J. W. SULLIVAN
DANIEL W. ROGERS
WILLIAM E. COLLINS
RICHARD E. GRAY, JR.
MORRIS HARRELL
TIMOTHY E. KELLEY
JAY S. HOLLOWAY
FRANK FINN
MARSHALL SIMMONS
J. S. BUCHMEYER
JACK M. LITTLE
JERRY P. JONES
RUST E. REID
GEORGE L. CHAPMAN
PAUL M. MCCULLOUGH

August 16, 1963

Mr. Robert M. Williamson, Jr. and
Miss Marjorie Williamson,
4923 Gaston Avenue,
Dallas, Texas.

Re: Effie Gilmer Williamson, et al.
v. the Hon. Paul Peurifoy, Judge
of the 95th District Court in
Dallas County, Texas.
Our File 21062

Dear Mr. Williamson
and Miss Williamson:

Enclosed is copy of a Motion I am filing with the United States District Clerk, seeking the return to the District Clerk of Dallas County of the seven original documents which you had caused to be subpoenaed from the State District Clerk and delivered to the United States District Clerk. I left a copy of this Motion with the Clerk several days ago to be called to Judge Davidson's attention on his return from vacation so that a date and hour might be set for hearing same.

I have now been advised that Judge Davidson is of the opinion that these documents belong in the records of the District Clerk of Dallas County and should be returned to him at once and there is no necessity for a formal hearing on such Motion; and I have been requested to prepare an Order directing the United States District Clerk to return such documents to the State District Clerk. Enclosed is a copy of the Order I have prepared and sent to Judge Davidson for such purpose.

Sincerely,

Sol Goodell

SG/RF
Enc.
cc-Judge T. Whitfield Davidson
cc-Mr. John T. McCullough
cc-Mr. Edward B. Twombly

55

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

September 5, 1963

Mr. John A. Lowther, Clerk
U. S. District Court
Dallas, Texas

Re: No. 19852 - Effie Gilmer Williamson, et al.
vs. The Honorable Paul Puerifoy, etc.

Dear Sir:

I am authorized by the Court to request that you return to this office those exhibits enclosed in my letter to you of June 20, 1963.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By G. F. Samuelson
Deputy Clerk

/mw
cc: Miss Marjorie Williamson

The Dallas Morning News
★★★★ Friday, September 27, 1963

Circuit Court's Load Termed Overwhelming

Washington Bureau of The News

WASHINGTON—The Fifth Circuit Court of Appeals is "literally overwhelmed" with pending cases, according to a report for the year ended June 30, 1963, issued this week by the director of the administrative office of the U.S. courts.

The load has increased 19 per cent over the previous year and is now 70 cases per judge as compared with the national average of 44, the report reveals.

The fifth circuit comprises the southern states from Texas to Florida. Dallas is in the northern of Texas' four districts.

Filings were up 22.2 per cent and terminations up 31.5 per cent. The report shows the southern circuit to be second highest in the country in both categories.

In the district courts, 21 cases were heard by three-judge courts, the largest number for any one circuit. The southern area also registered the largest number of terminations for the year. Cases pending as of June 30 were down almost 500 from last year.

The record shows 9,336 cases were begun during the year in the district courts of the fifth circuit. Pending from 1962 were 2,891 cases. Terminations for the year totaled 9,831.

Appeals cases pending in the fifth circuit July 1, 1962, totaled 528. Some 874 cases were begun this year, 772 were terminated. Cases pending as of June 30, 1963, totaled 630.

In the northern district of Texas, 75 appeals cases were filed in the 1963 fiscal year as compared with 48 the year before.

In the district courts, 875 civil cases were filed and 983 terminated. Pending as of June 30, 1963, were 636 cases as compared with 744 pending July 1, 1962. Of those pending, 219 were U.S. civil cases and 417 were private civil cases.

Wherefore appellants pray that this petition for a rehearing be granted and that the judgment heretofore entered by this Honorable Court on April 29, 1963, affirming the "judgment" of the district court be set aside; and that the "judgment" of the trial court be defined as ineffective on account of the ineffective orders issued by said court; and that this Court conceding equitable jurisdiction properly alleged in appellants' original motion for a preliminary injunction, particularly in the affidavit attached (R. P. 15), stating that defendant, an individual, an officer of the judicial branch of a state denied appellants due process of law in the 95th District Court in Dallas County, Texas and continues to deny due process of law to appellants as long as 76935 A D remains in the 95th District Court in Dallas County, Texas and moved the Court to prevent defendant from further proceedings in 76935 A D and on the jurisdictional facts admitted by defendant including the fact that he enforced against appellants a state statute repugnant to Amendment 14 issue a writ of preliminary and permanent injunction pursuant to U. S. C. Title 28 § 1651 enjoining defendant from further proceedings in Dallas County, Texas in 76935 A D; and that this Court review appellants' petition for removal in the record (R. P. 46) in a rehearing and grant the amended petition for removal included herein; and that this Court functioning as a United States Court of Appeals in Equity do substantial justice without delay.

Respectfully submitted,

Robert M. Williamson, Jr., Marjorie Williamson

Individually and as Independent Executors of the Estate of Effie Gilmer Williamson.

Appellants.

4923 Gas. Ave.
Dallas, Texas